

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KAYLEIGH SLUSHER, Deceased,
THROUGH HER SUCCESSOR IN
INTEREST JASON SLUSHER; JASON
SLUSHER, Individually; ROBIN SLUSHER,
Individually; and BENNY SLUSHER,
Individually,

Plaintiffs,

vs.

CITY OF NAPA, a public entity; NAPA
POLICE OFFICER GARRETT WADE,
Individually; NAPA POLICE OFFICER
DEGUILIO, Individually; NAPA POLICE
OFFICER ROBERT CHAMBERS,
Individually; NAPA POLICE OFFICER
GARRETT SMITH, Individually; NAPA
POLICE OFFICER JOSHUA SMITH,
Individually; COUNTY OF NAPA,
a public entity; NAPA COUNTY CHILD
WELFARE SERVICES SOCIAL WORKER
NANCY LEFLER, Individually; NAPA
COUNTY CHILD WELFARE SERVICES
WORKER ROCIO DIAZ-LARA,
Individually; and DOES 1–50, Jointly and
Severally,

Defendants.

Case No: C 15-2394 SBA

**ORDER GRANTING IN PART AND
DENYING IN PART AS MOOT
DEFENDANTS' MOTIONS TO
DISMISS**

Dkt. 85, 87

The father and grandparents of a three year-old child beaten to death by her mother and her mother's boyfriend bring the instant civil rights action under 42 U.S.C. § 1983 against police officers and social workers who failed to remove the child from her mother's custody. The Second Amended Complaint alleges federal claims for denial of substantive and procedural due process, municipal liability and interference with familial association and supplemental state law claims for violation of the Bane Act and negligence/negligence per se.

The parties are presently before the Court on the County Defendants and City Defendants' respective motions to dismiss the Second Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ The Court, having read and considered the papers filed in connection with these matters and being fully informed, hereby GRANTS IN PART and DENIES IN PART the motions to dismiss. The federal claims are dismissed without further leave to amend. The Court declines to assert supplemental jurisdiction over Plaintiffs' remaining state law claims, which are dismissed without prejudice to refile in state court.²

I. BACKGROUND

A. FACTUAL SUMMARY

The parties are familiar with the facts of this case, which are summarized herein to the extent they are pertinent to the instant motions. The decedent child, Kayleigh Slusher ("Kayleigh"), is the biological daughter of Jason Slusher ("Jason") and Sara Krueger ("Krueger"). During the relevant time period, Jason was incarcerated on a matter unrelated to this action. As a result, Kayleigh and her mother initially lived with Kayleigh's paternal grandparents, Robin Slusher ("Robin") and Benny Slusher ("Benny"). Krueger eventually moved to an apartment and took Kayleigh with her. After Kayleigh moved out, Robin and Benny became increasingly concerned for her welfare. Their fears were heightened by the fact that Krueger and her boyfriend, Ryan Warner ("Warner"), were using illegal drugs. In addition, Warner was a methamphetamine addict with an outstanding arrest warrant and extensive criminal history and who associated with similarly unsavory individuals.

Robin and Benny repeatedly called the Napa Police Department ("NPD") and Napa County Child Welfare Services ("CWS") to check on Kayleigh's welfare. CWS social

¹ The County Defendants consist of the County of Napa and two county social workers. The City Defendants consist of the City of Napa and four of its police officers. The identity of the individual defendants is discussed in the Factual Summary section of this Order.

² The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 workers Nancy Lefler-Panela (“Lefler-Panela”) and Rocio Diaz-Lara (“Diaz-Lara”) told
2 Robin there was nothing CWS could do and directed her to contact the police. Robin made
3 a number of detailed reports to the NPD that Kayleigh was living in an unsafe household
4 and asked that officers investigate the situation. NPD did not inform CWS of those reports
5 and did little to investigate Robin’s complaints. Finally, on January 29, 2014, NPD
6 Officers Garrett Wade and Deguilio visited the Krueger household to conduct a welfare
7 check on Kayleigh. The officers observed that Kayleigh had bruises on her face, and
8 appeared gaunt, sick, malnourished and distressed. The officers also observed Warner, who
9 looked sickly and appeared to be under the influence of drugs. Once inside the apartment,
10 Kayleigh vomited in front of them, and was quickly taken to the bathroom by Krueger.
11 They also saw a male whom they knew was on probation attempt to depart from the
12 premises. Krueger asked the officers to leave. The officers complied, but inexplicably
13 without making any effort to speak with Kayleigh or physically examine her.

14 On or about February 1, 2014, unspecified NPD police officers returned to the
15 Krueger residence for another welfare check. The officers discovered Kayleigh in her bed,
16 deceased. Her body had obvious facial injuries and trauma consisting of large contusions
17 on her forehead, face and neck that were in various stages of healing. Her eyes
18 were sunken in with dark bruising around her eyes. The Napa County District Attorney
19 later reported that Kayleigh died due to multiple blunt force trauma with impact injuries to
20 her head, torso and extremities, child abuse and neglect. Krueger and Warner were charged
21 in the Napa County Superior Court with torture and murder. See People v. Sara Krueger,
22 CR169462; People v. Ryan Warner, CR 169461. Trial is anticipated to commence in
23 February 2017.³

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27 ³ The County Defendants previously moved to stay the instant action pending the
28 conclusion of the state criminal proceedings. The Court denied that motion on June 9,
2016. Dkt. 99.

B. PROCEDURAL HISTORY

On May 29, 2015, Jason, individually and as the successor in interest to Kayleigh, and grandparents Robin and Benny, in their individual capacities, filed the instant action against: the City of Napa; County of Napa; the NPD; NPD Chief Richard Melton; NPD Officer Wade; NPD Officer Deguilo; CWS worker Diaz-Lara; and CWS worker Lefler-Panela.

On July 1, 2015, Plaintiffs filed a First Amended Complaint (“FAC”) which asserted the following claims: (1) violation of due process and interference with familial relations, pursuant to 42 U.S.C. § 1983; (2) municipal liability pursuant to Monell v. Dep’t of Soc. Serv. of N.Y., 436 U.S. 658 (1978); (3) violation of the Bane Act; and (4) negligence/negligence per se.

The County Defendants and City Defendants separately filed motions to dismiss all claims alleged in the FAC, which the Court granted in part and denied in part. Dkt. 45. The Court dismissed Plaintiffs’ first claim under 42 U.S.C. § 1983 for violation of due process and interference with familial association; second claim under Monell; and third claim for violation of the Bane Act.⁴ The Court denied the motion as to Plaintiffs’ claim for negligence/negligence per se. Dkt. 45. Plaintiffs were granted leave to amend their dismissed claims.

Plaintiffs timely filed their Second Amended Complaint (“SAC”). Dkt. 52. The SAC re-alleges the four claims from the FAC, as amended to address the deficiencies identified by the Court in its earlier order. In terms of party-defendants, the SAC omits Chief Melton, and adds NPD Officers Robert Chambers, Garrett Smith and Joshua Smith. Pursuant to Rule 12(b)(6), Defendants now move to dismiss all claims alleged therein. The motions are fully briefed and are ripe for adjudication.

⁴ Plaintiffs’ familial association claim was premised on both the Fourteenth and First Amendment. Because the parties did not adequately address the merits of the First Amendment claim, the Court declined to dismiss said claim.

1 II. LEGAL STANDARD

2 Federal Rule of Civil Procedure 12(b)(6) “tests the legal sufficiency of a claim.”
 3 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). “Dismissal under Rule 12(b)(6) is
 4 proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege
 5 sufficient facts to support a cognizable legal theory.” Somers v. Apple, Inc., 729 F.3d 953,
 6 959 (9th Cir. 2013). “Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires
 7 not only ‘fair notice of the nature of the claim, but also grounds on which the claim rests.’”
 8 Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013) (quoting in part Bell Atl. Corp.
 9 v. Twombly, 550 U.S. 544, 556 n.3 (2007)). “To survive a motion to dismiss, a complaint
 10 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
 11 plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550
 12 U.S. at 570 (2007)).

13 In assessing the sufficiency of the pleadings, “courts must consider the complaint in
 14 its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6)
 15 motions to dismiss, in particular, documents incorporated into the complaint by reference,
 16 and matters of which a court may take judicial notice.” Tellabs, Inc. v. Makor Issues &
 17 Rights, Ltd., 551 U.S. 308, 322 (2007). The court is to “accept all factual allegations in the
 18 complaint as true and construe the pleadings in the light most favorable to the nonmoving
 19 party.” Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir.
 20 2007). Where a complaint or claim is dismissed, leave to amend generally is granted,
 21 unless further amendment would be futile. Cervantes v. Countrywide Home Loans, Inc.,
 22 656 F.3d 1034, 1041 (9th Cir. 2011).

23 III. DISCUSSION

24 A. CLAIMS UNDER 42 U.S.C. § 1983

25 Count One of the SAC, which is predicated on 42 U.S.C. § 1983, alleges claims for
 26 violation of substantive and procedural due process and interference with familial relations.
 27 This set of claims is directed against the individual defendants: Officers Wade, Deguilo,
 28

Chambers and Smith; and CWS workers Diaz-Lara and Lefler-Panela. SAC ¶¶ 94-99. The Court analyzes Defendants’ arguments for dismissing these claims below.

1. Substantive Due Process

Generally, “a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” DeShaney v. Winnebago Cty. Dep’t of Soc. Servs., 489 U.S. 189, 196 (1989). The Ninth Circuit recognizes two exceptions to this general rule: (1) the “special relationship” exception; and (2) the “danger creation” exception. L.W. v. Grubbs, 974 F.2d 119, 121 (9th Cir. 1992). Plaintiffs rely on the latter, which applies “when the state affirmatively places the plaintiff in danger by acting with ‘deliberate indifference’ to a ‘known or obvious danger’ (the state-created danger exception)” Patel v. Kent School Dist., 648 F.3d 965, 971-72 (9th Cir. 2011) (citations omitted). In assessing the applicability of this exception, courts look to: “(1) whether any affirmative actions of the official placed the individual in danger he otherwise would not have faced; (2) whether the danger was known or obvious; and (3) whether the officer acted with deliberate indifference to that danger.” Henry A. v. Willden, 678 F.3d 991, 1002 (9th Cir. 2012); see also Pauluk v. Savage, 836 F.3d 1117, 1124-25 (9th Cir. 2016).

The Court previously found that Plaintiffs had failed to allege sufficient facts to demonstrate that Defendants affirmatively placed Kayleigh in a position that increased the risk of harm to her. Dkt. 45 at 9. The SAC does not cure that deficiency. As before, Plaintiffs continue to allege that Kayleigh’s death was caused by Defendants’ “failure to investigate and/or report child abuse and/or neglect . . . , remove KAYLEIGH from her obviously abusive and dangerous home and seek emergency medical care for her, as required by generally accepted law enforcement standards and training.” SAC ¶ 90. They add that Defendants’ failure to investigate and report the abuse “increased the risk of harm to Kayleigh.” Id. Although there is no dispute as to the second and third elements of the state-created danger exception (i.e., known or obvious danger and deliberate indifference), the Court finds that Plaintiffs have not pled facts showing that the Defendants engaged in

1 *affirmative action that increased the risk of harm* to Kayleigh. See DeShaney, 489 U.S. at
 2 201 (“While the State may have been aware of the dangers that Joshua faced in the free
 3 world, it played no part in their creation, nor did it do anything to render him any more
 4 vulnerable to them.”); Kennedy v. City of Ridgefield, 439 F.3d 1055, 1062 (9th Cir. 2006)
 5 (noting that a failure to protect claim is actionable only where the official “affirmatively
 6 created an actual, particularized danger [the victim] would not otherwise have faced . . .”).
 7 Defendants’ inaction, without more, does not give rise to a claim for a violation of
 8 substantive due process. Because further amendment to this claim appears futile, this claim
 9 is dismissed without further leave to amend.⁵

10 **2. Procedural Due Process**

11 The procedural due process component of the Fourteenth Amendment protects
 12 individuals against the deprivation of liberty or property by the government without due
 13 process. Portman v. Cty. of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). Protected
 14 liberty interests may arise either from the Due Process Clause itself or from statutory or
 15 regulatory provisions. Hewitt v. Helms, 459 U.S. 460, 466 (1983), overruled on other
 16 grounds by Sandin v. Conner, 515 U.S. 472 (1995). “State law can create a right that the
 17 Due Process Clause will protect only if the state law contains ‘(1) substantive predicates
 18 governing official decisionmaking, and (2) explicitly mandatory language specifying the
 19 outcome that must be reached if the substantive predicates have been met.’” James v.
 20 Rowlands, 606 F.3d 646, 656 (9th Cir. 2010) (quoting Bonin v. Calderon, 59 F.3d 815, 842
 21 (9th Cir. 1995)).

22 **a) Substantive Predicates to Decisionmaking**

23 Plaintiffs allege that their protected property interest arises principally from the
 24 mandatory child abuse reporting requirements set forth in the California Child Abuse and
 25 Neglect Reporting Act (“CANRA”), Cal. Pen. Code §§ 11164-11174.4. SAC ¶¶ 89, 90,
 26

27 ⁵ Certainly, should Plaintiffs uncover new facts to support this claim during the
 28 course of discovery, this Order does not foreclose them from pursuing such a claim in the
 event they refile this action in state court.

95.⁶ Under CANRA, a mandated reporter⁷ who, in the scope of his or her employment or professional capacity, knows about or observes a child that he or she reasonably suspects is a victim of child abuse or neglect, must report the abuse to the county welfare department or any police or sheriff's department or other statutorily designated agency. Cal. Pen. Code §§ 11166(a), 11165.9. Section 11166(a) requires an initial report by telephone and the submission of a written, follow-up report. *Id.* § 11166(a). Separate from the duties imposed on a mandatory reporter, subsection (k) requires that a law enforcement agency in receipt of a report of suspected child abuse or neglect to make a cross-report to the county welfare or probation department as soon as possible. *Id.* § 11166(k). The duty imposed by § 11166(k) is independent of the reporting duties under § 11166(a). B.H. v. Cty. of San Bernardino, 62 Cal.4th 168, 185 (2015).

In their prior motion to dismiss, Defendants argued that CANRA only creates discretionary—as opposed to mandatory—duties, and therefore, fails to provide any “substantive predicates to decision-making.” Dkt. 23 at 13. The Court disagreed, finding that the plain language of the statute made it clear that such duties were mandatory. In the course of its analysis, the Court cited Alejo v. City of Alhambra, 75 Cal.App.4th 1180, 1186-88 (1999), which held that, pursuant to § 11166(a), law enforcement officers who receive a report of child abuse have: (1) an implied duty to investigate and (2) an express duty to take further action when an objectively reasonable person in the same situation would suspect child abuse. Dkt. 45 at 10. The Court nonetheless dismissed Plaintiffs’ procedural due process claim on the ground that the pleadings failed to demonstrate the second requirement; to wit, that CANRA and the other cited statutes and regulations

⁶ The SAC alleges: “Among other sources, these rights under the First and Fourteenth Amendments derive from statutory mandates as created by California law. Investigation and/or reporting of child abuse and/or neglect is mandatory under the California Child Abuse and Neglect Reporting Act, Penal Code § 11164 et seq., Welfare and Institutions Code §§ 10550, 10553, 10554, and 10651, and is intended by law for the benefit and protection of children such as Kayleigh Slusher.” SAC ¶ 90.

⁷ A “mandated reporter” is defined to include a police officer, see Cal. Pen. Code § 11165.7(16), and a social worker, see id. § 11165.7(15).

1 contain mandatory language specifying the particular outcome that must be reached if the
2 substantive predicates have been met. Id. at 9-13.

3 In the instant motions, Defendants contend that the Court's analysis of CANRA is
4 no longer valid in light of the California Supreme Court subsequent ruling in B.H. In that
5 case, a private citizen called a 911 operator to report an incident of suspected child abuse
6 during the child's visit with his father. The dispatcher relayed the report to the county
7 Sheriff's Department, which, in turn, dispatched a deputy to the child's home to investigate
8 the matter. Three days later, the deputy prepared a report in which she noted there was an
9 ongoing custody dispute between the child's parents and that such information should be
10 noted for the file. Weeks later, the child suffered serious, traumatic head injuries inflicted
11 by his father. The child's mother, as his guardian ad litem, sued the county and the deputy
12 for failing to comply with their duties under § 11166(a) and (k). The trial court and court
13 of appeal ruled that the deputy and the Sheriff's Department had no duty to cross-report the
14 information from the 911 call or report the results of the deputy's investigation.

15 The California Supreme Court considered two issues on review: "(1) whether
16 CANRA imposed a mandatory duty on the Sheriff's Department to cross-report the child
17 abuse allegations to the relevant child welfare agency when it received the 911 report and
18 (2) whether CANRA imposed a mandatory duty on the investigating deputy sheriff to
19 report the child abuse allegations and her investigative findings to the relevant child welfare
20 agency despite her conclusion of no child abuse." B.H., 62 Cal.4th at 174. As to the first
21 issue, the court held that, upon receiving the 911 report, the Sheriff's Department had a
22 mandatory and ministerial duty under § 11166(k) to cross-report the child abuse allegations
23 to the county child welfare agency, and that the failure to cross-report could support a
24 finding of breach of a mandatory duty. Id. at 183-86. The court explained that, in enacting
25 CANRA, "the Legislature intended that the various law enforcement and child welfare
26 agencies immediately communicate to each other information received on alleged child
27 abuse or neglect so that they may in turn coordinate their investigative procedures." Id. at
28 185.

1 With regard to the second issue, the court concluded that the deputy had no duty
2 under § 11166(a) to report the results of her investigation because she was merely
3 investigating a report of child abuse, and was not acting as a mandatory reporter who had
4 become aware of the abuse in the first instance. The court noted that under its plain terms,
5 § 11166(a) “only requires *mandated reporters* to make reports if the reporter, in his or her
6 professional capacity or within the scope of his or her employment, knows or reasonably
7 suspects child abuse or neglect.” *Id.* at 188 (emphasis added).

8 In circumscribing the obligations imposed under § 11166(a), the supreme court
9 disagreed with the Alejo court’s determination that § 11166(a) imposes mandatory duties
10 on law enforcement officers who have received a report of child abuse.⁸ The court
11 explained that Alejo “conflates an officer’s mandatory reporting duties with those of an
12 officer investigating a reported instance of alleged child abuse or neglect. It failed to
13 recognize that there is ‘a dichotomy between reporter and reportee, i.e., . . . those who make
14 the initial report and the officials who come later’ in performing their investigatory or
15 prosecutorial functions.” *Id.* In the court’s view, § 11166(a) is aimed specifically at
16 defined *mandatory reporters*, who are obligated to report suspected child abuse when a
17 reasonable person would suspect abuse. *Id.* at 193. That reporting obligation, however,
18 does not extend to a *reportee*—i.e., a person, such as the deputy, who merely *received a*
19 *third party report of abuse* and was conducting an investigation based on information
20 reported to her. The court did note, however, that a reportee would, in some circumstances,
21 have a reporting obligation if he or she observed abuse that was not contained in the
22 original report. For instance, the deputy “would have been required to report were she
23 dispatched to investigate a report of a suspected incident of child abuse and observed
24 evidence that would sustain an objective suspicion that a different, previously unreported
25 incident or instance of child abuse had occurred.” *Id.* at 197.

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27 ⁸ The court did not, as City Defendants suggest, completely overrule Alejo. See
28 B.H., 62 Cal.4th at 188 n.6. Rather, B.H. only rejects the Alejo court’s interpretation of the
duties imposed upon a law enforcement official who is investigating a report of child abuse.

1 According to City Defendants, B.H. vitiates any claim by Plaintiffs that they had a
2 mandatory duty to do anything in response to Robin's reports of suspected abuse. Dkt. 87
3 at 14. This contention lacks merit. The SAC alleges that on January 23, 2014, it was
4 reported to the NPD and Officer Wade that Kayleigh was in immediate physical danger due
5 to Krueger and Warner's failure to provide her with food, drug users coming in and out of
6 the house at all hours, and the possibility of her being subjected to physical violence. SAC
7 ¶¶ 38-40. Despite this information, Officer Wade, as a mandatory reporter, did not cross-
8 report this information to CWS or otherwise undertake any other action. Id. ¶¶ 41-42. In
9 failing to do so, the facts alleged are sufficient to demonstrate that Officer Wade violated
10 his mandatory and ministerial duty under § 11166(k) to cross-report to the county child
11 welfare agency. B.H., 62 Cal.4th at 1181 ("Section 11166, subdivision (k) imposes an
12 obligatory duty, and not merely a discretionary or permissive authorization, upon law
13 enforcement agencies to cross-report the child abuse or neglect reports that it receives.").

14 Similarly, on January 29, 2014, Robin again contacted the NPD and Officer Wade to
15 report that Kayleigh was in imminent physical danger due to illegal drug use in her home,
16 lack of food and care, and potential physical violence. SAC ¶ 66. Neither cross-reported
17 this information, as required by CANRA. Id. ¶ 74. Upon visiting the apartment where
18 Kayleigh resided, Officers Wade and Deguilio observed indicia of long-term physical
19 abuse. Kayleigh appeared gaunt, sick, had multiple and severe contusions (including a 4-
20 inch bruise on her forehead and another bruise on her temple). They also saw her vomit as
21 a result of infectious peritonitis and necrotic small intestine. Id. ¶ 67. Construing the facts
22 in a light most favorable to Plaintiffs, a trier-of-fact could reasonably conclude that the
23 officers had observed that a "different, previously unreported incident or instance of child
24 abuse had occurred," thereby triggering their mandatory reporting obligation under
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1 CANRA. See B.H., 62 Cal.4th at 197.⁹ The Court therefore finds that Plaintiffs have
 2 sufficiently alleged the existence of substantive predicates governing official
 3 decisionmaking.

4 **b) Mandatory Language Specifying the Outcome**

5 The second aspect of a procedural due process claim requires Plaintiffs to
 6 demonstrate the existence of “explicitly mandatory language specifying the outcome that
 7 must be reached if the substantive predicates have been met.” James, 606 F.3d at 656.
 8 Here, Plaintiffs contend that if Defendants had complied with their mandatory duties to
 9 report and investigate Robin’s reports of child abuse, Kayleigh would have been taken into
 10 protective custody and received emergency medical treatment. Dkt. 110 at 16; see SAC
 11 ¶ 83. In particular, they point to language in CANRA stating that “all persons”
 12 investigating child abuse “shall consider the needs of the child victim and *shall do whatever*
 13 *is necessary* to prevent psychological harm to the child victim.” Cal. Pen. Code § 11164(b)
 14 (emphasis added). They also cite Welfare and Institutions Code §§ 16501(f) and 16504(a),
 15 which require that county welfare agencies “respond to any report of imminent danger to a
 16 child immediately” and to conduct an “immediate in-person response . . . in emergency
 17 situations,” respectively.

18 While the aforementioned provisions clearly impose specific duties on law
 19 enforcement officials and county welfare workers, they do not contain any “explicitly
 20 mandatory language” *requiring* the immediate removal of a child—or any other particular
 21 action—in every case where child abuse is suspected. Rather, the statutes merely articulate
 22 the procedure for evaluating, reporting and investigating claims of abuse; they do not
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24 ⁹ City Defendants argue the officers’ failure to cross-report Robin’s complaints
 25 would have made no difference in terms of protecting Kayleigh from her mother and
 26 boyfriend, since CWS already knew about those complaints and decided to take no action.
 27 The flaw in that argument is that it overlooks Plaintiffs’ allegations regarding Officers
 28 Wade and Deguilo’s visit to Kayleigh’s home on January 29, 2014. At that time, the
 officers observed clear signs that Kayleigh had been beaten and was malnourished and
 seriously ill. The officers did not report this new, previously unknown information to
 CWS. Thus, irrespective of Robin’s prior reports, the officers’ observations triggered their
 duty to cross-report their findings.

1 contain any “explicitly mandatory language specifying the outcome that must be reached”
 2 upon the discharge of those procedural duties. See James, 606 F.3d at 656. Rather,
 3 California law provides that the ultimate decision as to what course of action to undertake
 4 following a report and investigation of suspected child abuse is highly discretionary and is
 5 not governed by objective and defined criteria. See Jacqueline T. v. Alameda Cty. Child
 6 Protective Servs., 155 Cal.App.4th 456, 468 (2007); Cal. Wel. & Inst. § 306. For those
 7 reasons, the Court finds that Plaintiffs have failed to establish a right created under state
 8 law that is subject to protection under the Due Process Clause. Kentucky Dep’t of Corr. v.
 9 Thompson, 490 U.S. 454, 464 (1989) (no viable due process claim established where the
 10 “regulations at issue . . . stop short of requiring that a particular result is to be reached upon
 11 a finding that the substantive predicates are met.”).¹⁰ Because further amendment to this
 12 claim appears futile, Plaintiffs’ procedural due process claim is dismissed without further
 13 leave to amend.

14 **3. Interference with Familial Relations**

15 A claim for interference with familial relations may be grounded on the First or the
 16 Fourteenth Amendment. See Lee v. City of Los Angeles, 250 F.3d 668, 685 (9th Cir.
 17 2001). Plaintiffs state that “[they] do not contest that the applicable liability standard for a
 18 familial association claim under either the First or Fourteenth Amendment is the same as
 19 for the underlying claim.” Dkt. 109 at 20.¹¹ In view of the Court’s determination that
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22 ¹⁰ Plaintiffs’ reliance on Lyles v. City of Huntington Park, No. CV 16-3223-GW
 23 (KSx) (C.D. Cal. Jul. 7, 2016) is misplaced. See Haddad Decl. Ex. A, Dkt. 111. In Lyles,
 24 the district court found, as the Court does here, that the California Penal Code imposes the
 25 sufficient mandatory requirements for purposes of establishing a procedural due process
 claim. The decision, however, does not reach the dispositive issue in this case, which is
 whether those statutes recite an explicit, mandatory outcome upon discharge of those
 duties.

26 ¹¹ Plaintiffs erroneously contend that the applicable standard is “failure to take
 27 objectively reasonable measures in response to a serious risk of harm.” Id. (citing Castro v.
 28 Cty. of L.A., 833 F.3d 1060, 1072, (9th Cir. 2016) (en banc)). Castro involved the legal
 standard applicable to claims by pretrial detainees for failure to protect from assault while
 in custody, and is inapposite to this case.

1 Plaintiffs have failed to state any cognizable underlying due process claims, their claim for
2 interference with familial association is dismissed without further leave to amend.

3 **B. MONELL LIABILITY**

4 In the absence of an underlying constitutional violation, Count Two of the SAC for
5 Monell liability similarly fails. See Simmons v. Navajo Cty., 609 F.3d 1011, 1021 (9th Cir.
6 2010) (“[W]e hold that where there was no underlying constitutional violation, the
7 [plaintiffs] cannot maintain a claim for municipal liability.”). The Court therefore
8 dismisses said claim without further leave to amend.

9 **C. SUPPLEMENTAL JURISDICTION**

10 Plaintiffs’ remaining claims for violation of the Bane Act and for
11 negligence/negligence per se are based upon California state law. A district court may
12 decline to exercise supplemental jurisdiction if it has dismissed all claims over which it has
13 original jurisdiction. 28 U.S.C. § 1367(c)(3); Sanford v. MemberWorks, Inc., 625 F.3d
14 550, 561 (9th Cir. 2010). “[I]n the usual case in which all federal-law claims are
15 eliminated before trial, the balance of factors to be considered under the pendent
16 jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point
17 toward declining to exercise jurisdiction over the remaining state-law claims.” Sanford,
18 625 F.3d at 561 (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988),
19 superseded on other grounds by statute as recognized in Fent v. Okla. Water Res. Bd., 235
20 F.3d 553, 557 (10th Cir. 2000)). Having now dismissed all federal claims alleged against
21 Defendants, the Court declines to assert supplemental jurisdiction over Plaintiffs’
22 remaining claims. See City of Colton v. Am. Promotional Events, Inc.-West, 614 F.3d 998,
23 1008 (9th Cir. 2010) (holding that district court acted within its discretion in declining to
24 exercise supplemental jurisdiction after granting summary judgment on all federal claims);
25 see also Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (9th Cir. 1991) (“it is generally
26 preferable for a district court to remand remaining pendant claims to state court . . .”).

27 Plaintiffs request that the Court exercise supplemental jurisdiction over their state
28 law claims so that they may appeal the dismissal of the federal claims. Dkt. 109 at 22.

Under Rule 54(b), Plaintiffs cannot separately appeal the dismissal of their federal claims unless the Court permits the entry of judgment on less than all of the claims. Fed. R. Civ. P. 54(b). However, this case is not suited for certification under Rule 54(b), as the state law claims are based on the same set of facts underlying the federal claims. See Wood v. GCC Bend, LLC, 422 F.3d 873, 882 (9th Cir. 2005) (reversing Rule 54(b) certification where the dismissed claims were largely based on the same set of facts as the remaining claims); Morrison-Knudsen Co. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981) (“A similarity of legal or factual issues will weigh heavily against entry of judgment under [Rule 54(b)]”). Declining to assert supplemental jurisdiction over the state law claims will, however, facilitate Plaintiffs’ ability to refile them in state court while simultaneously allowing them to pursue an appeal before the Ninth Circuit.

IV. CONCLUSION

The horrific murder of Kayleigh likely could have been prevented had the police officers and social workers involved in this case performed their jobs with any semblance of competence. Robin’s numerous reports were all but ignored, with tragic consequences. Nonetheless, binding case law requires this Court to dismiss the federal claims alleged in this action. Accordingly,


IT IS HEREBY ORDERED THAT:

1. Defendants’ motions to dismiss are GRANTED with respect to Plaintiffs’ federal claims, as set forth above, which are dismissed without further leave to amend.
2. The Court declines to assert supplemental jurisdiction over the remaining state law claims for violation of the Bane Act and negligence/negligence per se. Plaintiffs may re-file these claims in state court. Pursuant to 28 U.S.C. § 1367(d), the statute of limitations with respect to these claims shall be tolled during the time period that this suit has been pending and for thirty (30) days following entry of this Order, unless California law provides for a longer tolling period. Defendants’ motions to dismiss Plaintiff’s state law claims therefore are DENIED as moot.

1 3. The Clerk shall close the file and terminate any pending matters.

2 IT IS SO ORDERED.

3 Dated: 12/07/16


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge